IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

WP(C).No. 29309 of 2005(L)

OS.119/2003 of PRL.M.C.KOZHIKODE-I
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PETITIONER:

M/S.SHIVA TEXYARN LTD. (FORMERLY KNOWN AS M/S.ANNAMALLAI FINANCE LTD., REGD. OFFICE 252-, METTUPALAYAM ROAD, COIMBATORE-641 043, (REPRESENTED BY SRI.N.P.PRAKASAN, BRANCH IN CHARGE, KOZHIKODE BRANCH OF M/S.SHIVA TEXYARN LTD.)

BY ADV. SRI.T.KRISHNAN UNNI
SRI.P.S.MURALI

RESPONDENTS:
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1. **MR.T.P.VIJAYAN, AGED 43 YEARS, S/O.MR.C.GOVINDAN NAIR, RESIDING AT CHALAKKAL HOUSE, P.O.KARANTHOOR, KUNNAMANGALAM-VIA, KOZHIKODE DISTRICT-673 611.**

2. **MR.K.VISWANATHAN, AGED 47 YEARS, S/O.UNNI NAIR, KUNDOTH HOUSE, P.O.KIZHAKKUMURI, KAKKODI, KOZHIKODE-673 611.**

3. **MR.K.C.RAJAGOPALAN, AGED 36 YEARS, S/O.P.N.BHASKARAN NAIR, SHANTHI NIVAS, P.O.KIZHAKKUMURI, KAKKODI, KOZHIKODE-673 611.**

BY ADV. SRI.V.SREENATH for R1 to R3
SRI.C.VIVEK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.29309/2005 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.119/2003 DTD. 22/12/2002.**

EXT.P2: **COPY OF THE WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S.119/2003 DTD. 15/09/2003.**

EXT.P3: **COPY OF THE ADDITIONAL WRITTEN STATEMENT FILED BY THE DEFENDANTS IN O.S.119/2003 DTD. 29/09/2004.**

EXT.P4: **COPY OF THE LETTER SENT BY THE BRANCH IN CHARGE TO THE HEAD OFFICE OF THE PETITIONER COMPANY DTD. 23/07/2003.**

EXT.P5: **COPY OF THE REPLY ISSUED BY THE LEGAL MANAGER OF THE PETITIONER COMPANY DTD. 9/08/2003.**

EXT.P6: **COPY OF THE PETITION I.A.1933/2005 FILED BY THE RESPONDENT NO.1 DTD. 11/06/2005.**

EXT.P7: **COPY OF THE ORDER IN I.A.2601/2005 IN O.S.119/2003 DTD. 21/07/2005 OF THE 4TH RRESPONDENT IN O.S.119/2003 DTD. 21/07/2005.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE,J.

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W.P.(C) No.29309 of 2005

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Dated: 19th June, 2007

JUDGMENT

Ext.P7 order by which the learned Munsiff dismissed an application filed by the plaintiff for forwarding the suit document, a hire purchase agreement and the balance confirmation letter containing the apparent signatures of the respondents to the Forensic Science Laboratory for verification as to whether the apparent signatures on those documents do belong to the respondents after making a comparison with their admitted and indisputable signatures is under challenge.

2. Under Ext.P7 order the learned Munsiff has dismissed the application. But a careful reading of Ext.P7 will show that delay and laches on the part of the petitioner was the main reason which weighed with the learned Munsiff for dismissing the application. The respondents have filed a written statement and additional written statement in the suit. In the first written statement the execution of documents have been denied but in the additional written statement that more serious challenge is raised regarding the apparent signatures seen on the documents. The case of the learned counsel for the petitioner that filing of the additional written statement was

without notice to the petitioner is not resisted by the respondents before me at the bar. It is seen that the suit which had been dismissed for default on 8.10.2004 was restored by the court only on 2.6.2005 and immediately after restoration the suit was listed for trial on 18.7.2005. The application for forwarding the documents to the expert was filed after the suit was listed for trial. The learned Munsiff is certainly right in his view that there was some laches on the part of the plaintiff in filing the application on time. But at the same time the fact that it was through the additional written statement that more serious and specific contentions were raised by the respondents cannot be ignored. After all the petitioner-plaintiff does not want to gain anything by delaying the trial and disposal of his own suit. Issue of limitation has been raised as a very serious issue in the suit. Therefore the question whether the acknowledgement has been signed by the respondents will be of considerable moment. I do not think that any prejudice will be occasioned to the respondent by allowing the application filed by the petitioner. But the cost in the matter of forensic scrutiny and obtainment of report shall be borne by the petitioner himself. In other words that cost shall not form part of the cost of the suit. There will be a further condition that the

petitioner pays a sum of Rs.1000/- to the Kerala High Court Legal Services Committee which shall be paid by him within four weeks from today. Ext.P7 will stand set aside and I.A.No.2601/05 will stand allowed on condition that the petitioner remits a sum of Rs.1000/- with the Kerala High Court Legal Services Committee within four weeks from today and on the further condition that the entire cost for the scrutiny and report of the documents made mentioned of in the I.A. will be borne by the petitioner and such cost will not form part of the costs of the suit. The documents need be forwarded by the learned Munsiff to the Forensic Science Laboratory at Trivandrum only for expert opinion.

The Writ Petition is allowed to the above extent.

srd **PIUS C.KURIAKOSE, JUDGE**